

March 27, 2002

BETH WEBER, ET AL.  
Request for Commission Investigation  
And Audit of Practices of Casco Bay  
Island Transit District

PROCEDURAL ORDER

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**I. Procedural History**

On February 6, 2002, Beth Weber, on behalf of herself and 126 other persons, filed a complaint with the Commission pursuant to 35-A M.R.S.A. § 1302 requesting that we investigate and audit the practices of Casco Bay Island Transit District (CBITD or the District). On February 7, 2002, we issued a Notice of Complaint and requested that CBITD respond to the complaint within 10 days. On February 15, 2002, CBITD filed a letter with the Commission requesting an extension of time for filing its response. On February 15, 2002, we granted the request and extended the reply deadline until March 1, 2002. On March 1, 2002, CBITD filed a written response to the complaint. (See Attachment A. A copy of the reply may also be found at <http://mpuc.informe.org/cache/105245.pdf>)

In its written reply, CBITD informed the Commission that on February 15, 2002, the Board of Directors had voted against increasing rates because additional funding had been obtained from the federal government.

**II. Applicable Statutes and Rules**

CBITD was created by statute in 1981 by Private and Special Law, Chapter 22, Section 1 as a quasi-municipal utility. (See Attachment B.) Pursuant to the statute, the District took over ownership and operations of the ferry service in Casco Bay. The District is managed by a 12-member board of directors, 10 of whom are directly elected by the islanders. The Board must meet monthly and is empowered to make all decisions necessary to run the District, including establishing both the routes and the fares of the ferry service. Pursuant to an amendment to section 12 of the enabling statute, the Commission retains jurisdiction to regulate the District, except that rates established by the Board are allowed to go into effect without explicit Commission approval unless at least 50 ratepayers file a written request for investigation. (See Attachment C.)

Section 1302 of Title 35-A provides a process for the Commission to consider complaints filed by ratepayers. It provides that upon receipt of a complaint, the Commission will require the utility to provide a response within 10 days. Upon receipt of the response, the Commission determines whether it is satisfied that the utility has taken adequate steps to remove the cause of the complaint, that the complaint is

without merit and can be dismissed or that the complaint warrants commencement of a full investigation.

Title 35-A section 301 requires every public utility to furnish safe, reasonable and adequate facilities and service. In addition to a formal investigation, the Commission may initiate a management audit of the operations of any public utility, pursuant to 35-A M.R.S.A. section 113, to determine:

the degree to which a public utility's operations are conducted in an effective, prudent and efficient manner judged by the standards prevailing in the utility industry [and] the degree to which a utility minimizes or avoids inefficiencies which otherwise would increase costs to customers.

35-A M.R.S.A. § 113 (1) (B) and (C). If the Commission finds that a management audit is reasonable, the Commission may select the independent auditor, require the utility to execute a contract with the auditor, and require the utility to pay for the costs of the audit. *By statute, however, the full costs of the management audit are to be recovered from the utility's ratepayers.*

As a quasi-municipal utility, CBITD does not have any shareholders or other private ownership interests who are financially responsible for CBITD. It is the ratepayers themselves who "own" CBITD. As a result, past costs and expenses cannot be "disallowed" as is the case with an investor owned utility. Ultimately, all costs and expenses of the District must be recovered from customers. These include prior expenses related to employment issues and future expenses that might result from a formal Commission investigation.

### III. Analysis

The Commission Staff has reviewed the complaint and CBITD's response to the complaint. First, we note that several of the issues listed in the original complaint do not present actionable items for the Commission. Specifically, items Nos. 1 and 2 relate to the proposed rate increase which has now been voted down by the Board and is no longer an issue. As to item No. 3, CBITD's response provides a *prima facie* showing that its actions over the past several years were reasonable given the particular circumstances it faced. The conflicting decisions from labor arbitrators and the Maine Human Rights Commission indicate the complexity of the situation and the difficulty in resolving the issues to the satisfaction of all involved. As to item No. 4, we note that the Board was elected by the islanders and that islanders will have an opportunity to elect three new board members later this year.

It appears to Commission Staff that the complaint does not warrant further investigation. Before we recommend that the Commission dismiss this complaint as without merit, we will provide the complainants with an opportunity to submit any

specific facts which dispute the factual statements contained in CBITD's response and to specifically delineate issues which warrant the Commission opening a formal investigation and/or management audit of a Board of Directors. The complainants should state with specificity the actions they propose the Commission take with respect to CBITD and the expected impacts of any such actions on the District's ratepayers, given the statutory limitations discussed above.

Complainants must file their comments no later than **April 17, 2002**. After review of the comments, Staff will make a recommendation to the Commission regarding whether to dismiss the complaint or open a formal investigation.

CBITD is ordered to make copies of their Reply to the Complaint available at the ferry terminal. Copies are also available on the Commission's website at the address listed above.

BY ORDER OF THE HEARING EXAMINER

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Trina M. Bragdon  
Hearing Examiner